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IDAHO SUPREME COURT
COURT OF APPEALS

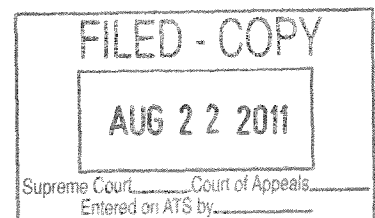
Tony Ray Stokes)	
Petitioner-Appellant,)	
)	CASE # 37915 - 2010
)	
v.)	ADA County District Court no.
)	2009-11670
)	
)	APPELLANT'S BRIEF
)	
State of Idaho)	Ref. No. 11-301
Respondent)	
)	

I.

1. Comes now the Appellant, Pro-se and Informally, having alleged he proceeds under legal disability.
2. Appellant seeks permission to file a non-conforming brief, the (legal) Resource Center does not have forms under App. R. 36, (etc.) for this action.

II.

1. Background, of this case is found in the Clerks Record, (R.);
R. at P.5, P.39 at (2), (3), (4).



2. Introduction; The Appellant did file a Motion for Reconsideration of Order on 3/28/2011^{*}; that was denied by the District Court on 2/20/2011, without ruling on the issues.
[*M.R]

The Appellant does realize that some of the said [M.R.] Motions issues should be in fact appeal brief issues; the Appellant does ask for this Court to incorporate the Motion into this brief's arguments.

For reasons listed below there may (?) be insufficient facts for this court to make a de novo issues rulings on the merits of the U.P.C.P.A., (original and incorporated amended), and thus remand may be the only appropriate remedy.

III.

Authority

- 1) Form App. R.36
- 2) UPCA
- 3) Amend 6, 5, 14
- 4) Confrontation Clause
- 5) Due Process - Notices Doctrine
- 6) Laws of Duress
- 7) Actual Innocence
- 8) Equity, the Equitable clean-up doctrine, as cojoined to duress
- 9) Unconscionability - unconscionability doctrine

- 10) Tennessee v. Lane 541 U.S.
- 11) U.S. v Holland 560 U.S.
- 12) Phelps, 569 F.3d
- 13) Parrottt v. State, 117 Idaho 272 (1990)
- 14) Castille v. Peoples, 489 U.S. 346, 351 (1989)
- 15) Palmer v. Dermitt, __Idaho__ (Sup. Ct. 1981)
- 16) National Legal Aid Defenders Association (nolda.org)
- 17) U.S. v Cannon, 88 F.3d 1495, 1502-03 (8th Cir. 1996), (Biker, dealer, low life, skum, pervert, etc.)
- 18) Lindquist, 776 F.2d
- 19) Gomez CV94-291-299
- 20) Wheeler v. Townsend, CV01-274-S-MHW, U.S. District Court Idaho, Order 24 June 2004;
- 21) Threon v. Hernandez 540 U.S. (2003)
- 22) Ullrich v. Idaho CV04-352-S-BLW, U.S. District Court Idaho, Order of 6/26/2006
- 23) Phillips v. Woodford, 267 F.3d 966, 973 (9th Cir. 2001)
- 24) Earp v. Dronski, 431 F.3d 1148, 1167 (9th Cir. 2005)
- 26) Saykamchone v. State, 900 P.2d 795 (1995)
- 27) Banks v. State, 855 P.2d 38, 39 (1993)

IV

ISSUES

1. Actual Innocence.
2. U.P.C.A., Amend 6., Violation of Confrontation Clause.
3. U.P.C.P.A. Respondents waived defences.
4. Cause and Prejudice, hindered or chilled redress.
5. U.P.C.P.A. Raised genuine issues requiring evidentiary hearing.

6. (Above 1. - 5., etc:) The Court did not issue a Notice of Intent to Dismiss, and give an opportunity to correct U.P.C.P.A. errors.

V

ARGUMENT

1. The Actual Innocence [M.R., P-40 at 8] is found in the attached exhibit;

The standards of specific intent that attaches to the criminal charge recognizes that a supposed victim could have formed consent, [intent to commit the action], that the supposed victim states she had a common practice of asking numerous individuals to photograph her, [it was not the accused who initiated the conduct in question].

This conduct of the supposed victim would indicate that the accused did not engage in specific intent; a.) a pre-meditated plan to commit a crime, b.) engaging in preparatory actions intended to cause the criminal conduct to occur, c.) the completion of the designed criminal plan.

Though a subsequential, other crimes would occur as a result of the plan, even if the plan was not completed, however, reference that from the exhibit that guilt of lewd conduct cannot be found.

2. The Sixth Amendment to the U.S. Constitution guarantees the

accused the right of "Confrontation"; (id) to bring the plaintiff to the bench, before the Court, to be confronted (questioned) by the accused.

The exhibit was mailed to the Judge and defence counsel was knowledgeable of; thus judicial error is alleged when the Judge would not allow the plaintiff to be called to the bench; and ineffective counsel is alleged when the defence counsel did not file appropriate motions to bring the plaintiff to the bench, and motions in opposition of any denial to bring the plaintiff before the bench.

(see also) U.S.C.A., Amend 5, 14, Due Process, Notices Doctrine (Notice of Plaintiff's recanting and Opportunity to Address said)

3. The Appellant does allege the Rules of Civil Procedure [R. Civ. P.], are specific in protecting a defendants rights under the Due Process - Notices Doctrine; and R. 7(a), R.12(b) - (etc.), the State was required to respond to the U.P.C.P.A. with specific clout all defences, (mere assertions are not acceptable);

A review of the State's Response does not contain any specific defences; with emphasis the claim of Actual Innocence.

R. Civ. P., R.8(c), (same) R.11(c), as derived from the statutes of fraud, defers to R.8(o1) the Respondent waived

all defences, (id) giving truth to the merits of the U.P.C.P.A.

4. Petitioner has claimed Cause and prejudice, (id) that his efforts at redress of his judgement (conviction and sentence) have been hindered or chilled.

Jurisprudence holds that cause and prejudice are reviewed under the standards of unfair or unjust "Coercion", (inconclusive of any acts of retaliation), (see) a). Laws of Redress, b). Equity, the equitable Clean-up doctrine, as cojoined to duress, c). Unconscionability - Unconscionability Doctrine; and, [M.R., P.-5] that Tennessee, 541 U.S.; U.S. v Holland 560 U.S.; Phelps, 569 F.3d; (etc.), will allow this Court to remand this U.P.C.P.A. for evidentiary hearing.

- A. Trial Counsel, regarding redress by appeal was in conflict, that he could not have raised the ineffective counsel in trial stages in the Notice of Appeal, issues, (though normally a U.P.C.P.A. issue, an Appellate Court may hear, (see) Parrott v. State, 117 Idaho 272 (1990), Castille v. Peoples 489 U.S. 346, 351 (1989)

Thus [M.R., P.11.] the Appellant), Petitioner did not act in bad faith and waive any issue; Ref: Palmer v. Dermitt,

Idaho (Sup. Ct. 1981); and all issues of the U.P.C.P.A., were deservant of an evidentiary hearing on all issues of ineffective counsel in trial and sentencing.

(see also) National Legal Aid and Defenders Association (Nalda.org), this issue has been affirmed as true by a panel of experts.

- B. The Clerk's Record is devoid of the criminal appeal record. Never-The-Less, [M.R., P.13. Last Ln. to Pg. 14] Appellant tried to identify criminal appeal deficiencies, as found by a panel of experts; (Nalda.org), Idaho Trial Public Defenders fail to properly file appeals and identify and preserve appeal issues, and that deficiencies in the Idaho St. App. Public Defenders Office fail to cure the deficiencies of trail counsel.

Appellant does believe the following are issues of criminal appeal should be raised.

- 1) Failure to raise obvious and significant issues, Mason v. Hawks 97 F.3d 887, 894 (7th Cir. 1996)
- 2) Failure to advise of all possible defences, U.S. v. Taylor 139 F.3d 294, 933-34 (D.C. Cir. 1998)
- 3) Failed to file and raise Appeal issues, Anders v. California 386 U.S. 738

C. Because, as stated above the criminal appeal record is not available, the Petitioner does not know what issues of prosecutorial misconduct were waived without permission of this appellant;

here-upon the petitioner has reason to believe that prosecutorial error or otherwise prosecutorial misconduct may have occurred.

1. Acquiescence of denial of right to Confrontation
2. Improper reference to defendant as a "bad person",
U.S. v. Cannon 88 F.3d 1495, 1502-03 (8th Cir. 1996)
(Id), (Biker, dealer, low life, skum, pervert, etc.)

D. The Appellant does allege the cause and prejudice extends to the U.P.C.P.A. attorney, [M.R., p.11. Last Par. to P.12. (etc.)]

- a.) Failed to raise as a primary issue, and failed to properly brief actual innocence.
- b.) Failed to consult with client on issues and standards of law and equity.
- c.) Failed to support brief with law, equity and res-judicada.
- d.) Failed to support the brief with actual fact/evidence.
- e.) Failed to provide to Court an affidavit of Petitioner.
- f.) Failed to file motions in opposition of the (State)

Motion for Waiver of client privileges.

g.) Failed to file a reply to (State) answer.

h.) Failed to reply (oppose), (State) Motion for Summary Judgement.

i.) Failed to file a Motion (Request) Evidentiary Hearing. [M.R., P.3.] Holland 560 U.S., (etc.), Allows for remedy of attorney misconduct.

E. Jurisprudence, (id) Res-Judicada has stated a penal system can cause a "State Created Barrier", generally, and heighten for disabled. [M.R., P.9 Argu. 1.].

The contempt of Lindquist, 776 F.2d, Gomez CV91-299, by removal of the law library (resources) and legal assistance program for literary challenged has an assumed prejudice; affirmed in Wheeler v. Townsend, CV01-274-S-MHW, U.S.

District Court Idaho, Order 24 June 2004; and

The removal of the legal assistance program is [28 C.F.R. §134] an unfair and unjust retaliation against disabled, regarded as discrimination;

(see also) Raytheon v. Hernandez 540 U.S. (2003), the State has discriminated against disabled by establishment of general access to Courts policy and procedures that tend to eliminate access for disabled (desparate treatment); and in Ullrich v. Idaho, CV04-352-S-BLW, U.S. District Court Idaho, Order of 6/26/2006, did discriminate by refusal to modify policy and procedure, [28 C.F.R. §35.130

(b)(7)] to ensure Administrative and Judicial redress would be available for disabled inmates, (Desparate - Discrimination - Treatment]

5. The petitioner was denied the right to bring his genuine issues of his U.P.C.P.A. to an evidentiary hearing.

U.P.C.P.A., Counsel failed to move for an evidentiary hearing;

This is a "Critical Stage" of the U.P.C.P.A. process,

- 1.) the petitioner alleged facts which if true, would entitle him to relief, 2.) the State Court did not, after a full and fair hearing, upon actual fact, reliably found the facts,^(a) 3.) the petition does not consist solely on conclusionary, unsworn statements, unsupported by any proof, (see original U.P.C.P.A.), (this exhibit).

Ref: Phillips v. Woodford, 267 F.3d 966, 973 (9th Cir. 2001), Earp v. Oronski, 431 F.3d 1148, 1167 (9th Cir. 2005).

Working backwards #3) is satisfied so long as it is supported by declarations or actual fact, (fairly easy to do), #2) is met when the petitioner has requested a hearing in the State District Court,

- (a) E.E.O.C. v. KWMT Inc., 718 F.Supp. 1425, 1428 (N.D. Iowa),

(a judge cannot fully determine whether a defendants Motion to Dismiss is well grounded until discovery is completed.)

#1) is more demanding, however, that in deciding whether to grant an evidentiary hearing (or not) the Court must accept as "true" the facts provided by the petitioner, (id) any factual dispute would then have to move to evidentiary.

Here-upon - the District Courts dismissal without evidentiary was not well grounded, [emphasis here-to exhibit].

6. Generally, the Appellant feels that there was such a long list of deficiencies by the U.P.C.P.A. counsel (above, 4, D) that the District Court should have realized that Petitioner's counsel was not properly performing; and with the Courts list of deficiencies listed in its Order of Dismissal;

The Petitioner does allege the Court was in error to not issue a Notice of Intent to Dismiss, to put both; the petitioner; and the Counsel, on notice of the deficiencies and an opportunity to repair the U.P.C.P.A.

Ref. Saykamchone v. State, 900 P.2d 795 (1995); Banks v. State, 855 P.2d 38, 39 (1993).

This Court could also attach to above 4., cause and prejudice from the denial of a fair opportunity to preserve the U.P.C.P.A., that to take any and all means to try to preserve a petitioner's action.

PRAYER FOR RELIEF

The Appellant does pray that under the "Collusive Effect Doctrine" that there is a long list of joint violations of his "Rights, privileges, and immunities" that have violated his substantive right to one full and fair access to a U.P.C.P.A.; and there-upon remand this action for proper proceeding.

Respectfully submitted:


Tony Ray Stokes

This 18 day of August, 2011

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 18 day of August, 2011.
I mailed a true and correct copy of the APPELLANT'S BRIEF
via prison mail system for processing to the U.S. mail system to:

Idaho Attorney General
605 W State Rm 100
PO. Box 83720
Boise, Idaho 83720-0003